

### **REMARKS**

Reconsideration of the allowability of the present application is requested respectfully.

#### **Status of the Claims**

Claims 1, 3, and 26 to 28 are presented for examination. No claims are withdrawn. No claims have been amended. No claims have been canceled. No claims have been added.

### **ARGUMENTS**

In response to the Examiner's Office Communication dated July 19, 2004, Applicants submit herewith declarations under 37 CFR §1.131 signed by inventors Thomas Haws, Patrice Denefle, and Marie Rosier. These declarations are submitted to supplement Applicants Reply, dated April 19, 2004, particularly Applicants' arguments traversing the rejections of Claims 1 and 3 under 35 U.S.C. §102(a) as being anticipated by Sugano et al., Online EMBL Database; "Homo sapiens cDNA FLJ20177 fis, clone COL09966, highly similar to Y08136 H", Accession No.: AK000184. These arguments are reiterated below and have been changed to include reference to the declarations submitted herewith.

#### **The §102(a) Rejections**

##### **The Rejection of Claims 1 and 3**

The Examiner has rejected Claims 1 and 3 under 35 U.S.C. §102(a) as being anticipated by Sugano et al., Online EMBL Database; "Homo sapiens cDNA

FLJ20177 fis, clone COL09966, highly similar to Y08136 H", Accession No.:  
AK000184.

Applicant respectfully traverses the rejection.

MPEP §715 states (emphasis added):

Affidavits or declarations under 37 CFR 1.131 may be used, for example:

(A) To antedate a reference or activity that qualifies as prior art under 35 U.S.C. 102(a) and not under 35 U.S.C. 102(b), e.g., where the prior art date under 35 U.S.C. 102(a) of the patent, the publication or activity used to reject the claim(s) is less than 1 year prior to applicant's or patent owner's effective filing date.

Accordingly, Applicants have previously submitted a declaration under 37 CFR §1.131, signed by inventor June Kaplow, which establishes the invention of SEQ ID NO:3 by Applicants prior to the publication of Sugano et al. Applicants submit herewith declarations under 37 CFR §1.131 signed by inventors Thomas Haws, Patrice Denefle, and Marie Rosier. Accordingly, as all of the inventors have signed declarations, "the inventor of the subject" matter requirement of 37 CFR §1.131 has been satisfied. These declarations make reference to a Record of Invention (ROI), with dates redacted, prepared by inventor June Kaplow prior to February 15, 2000. A copy of this ROI was provided in the Reply dated April 19, 2004.

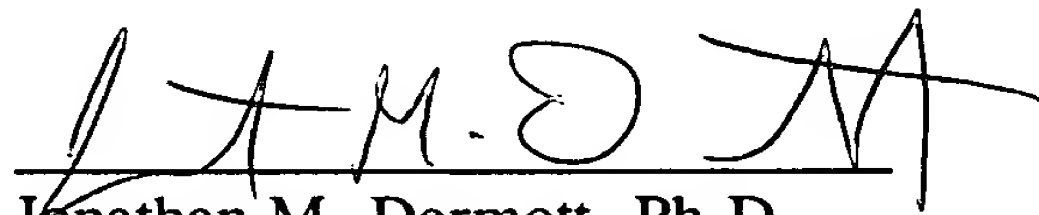
Page 1, Section 2 of the ROI refers to "The nucleotide sequence of clone 7a, clone 14b" which is included as an attachment to the ROI (pages 9 and 10). The nucleotide sequence of clone 14b is the same as SEQ ID NO:3 of the present application.

Exhibit B is a sequence comparison of clone 14b/SEQ ID NO:3 and the sequence disclosed in Sugano et al. Applicants concur with the Examiner's assertion that clone 14b/SEQ ID NO:3 and the sequence disclosed in Sugano et al. comprise 1361 out of 1362 identical residues (nucleotide 481 of clone 14b/SEQ ID NO:3 is different that nucleotide 553 of the sequence disclosed in Sugano et al.).

The declarations and supporting documents establish that the date of invention for clone 14b/SEQ ID NO:3 by Applicants was prior to the publication of Sugano et al. Accordingly, applicants respectfully request withdrawal of the rejections of Claims 1 and 3 under 35 U.S.C. §102(a) as being anticipated by Sugano et al.

A favorable action on the merits is requested respectfully. A Petition for a four-month extension of time to respond to the Action, from August 19, 2004 to December 19, 2004, a Sunday, is enclosed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. M. Dermott', written over a horizontal line.

Jonathan M. Dermott, Ph.D.  
Registration No. 48,608

SYNNESTVEDT & LECHNER LLP  
Suite 2600 Aramark Tower  
1101 Market Street  
Philadelphia, Pennsylvania 19107  
(215) 923-4466